

// 1 //

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT

IN

S.B. Criminal Appeal No.52/2005

Mukesh S/o Shri Surjan

Versus

The State of Rajasthan through the PP.

Date of Judgment ::: 16.5.2007

Present

Hon'ble Mr. Justice Narendra Kumar Jain

Shri Biri Singh Sinsinwar with
Shri Harendra Singh and
Shri Kartar Singh Faujdar, Counsel for accused-
appellant
Shri B.N. Sandu, P.P., for the respondent State

//Reportable//

By the Court:-

The matter has come-up for orders on the application for suspension of sentence filed on behalf of the accused-appellant, but the learned counsel for the appellant submits that the appeal itself may be heard finally as he does not want to press the appeal on merits in respect of the order of conviction and his prayer is only limited to the extent that the sentence of imprisonment of the accused-appellant may be converted from simple to rigorous imprisonment, so he may get the benefit of remission as per the Rajasthan Prisons Rules, 1951.

The prayer of the learned counsel for the appellant is not opposed by the learned counsel for

the respondent State.

With the consent of learned counsel for both the parties, the appeal is heard finally and being disposed of.

Accused-appellant Mukesh S/o Surjan has been convicted by the trial court under Section 376, Indian Penal Code, to undergo 7 years simple imprisonment and a fine of five hundred rupees; in default of payment of fine, to further undergo three months simple imprisonment.

The learned counsel for the appellant did not challenge the order of conviction passed by the trial court against the appellant; he is also not challenging the order awarding him sentence to undergo 7 years imprisonment, but his only prayer is that according to the Rajasthan Prisons Rules, the benefit of remission is not given to accused-persons whom sentence of simple imprisonment is awarded and the said benefit of remission is given only in case where rigorous imprisonment is awarded to accused-persons. He, therefore, contended that 7 years simple imprisonment of the appellant may be converted into 7 years rigorous imprisonment from the date of his arrest so that he may get the benefit of remission according to statutory Rules.

The prayer of the learned counsel for the appellant is not seriously opposed by the learned

Public Prosecutor in view of the fact that the order of conviction has not been challenged by the learned counsel for the appellant.

I have considered the submissions of learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

The charge against the accused was that he committed forcible sexual intercourse with PW-3 Lakhanti, aged about 12 years on 12.9.2003. The charge against the accused-appellant is proved from the statement of PW-3 Lakhanti, whose statement is further corroborated by PW-1 Radheyshyam (the father) and PW-6 Prem (the mother of the prosecutrix), and also from the medical-report, and the statement of Dr. M.L. Kanwat (PW-10). The age of the prosecutrix has also not been disputed by the learned counsel for the appellant seriously.

As per the statements of PW-3 Lakhanti, PW-1 Radheyshyam, PW-6 Prem and also the Medical/X-ray Report (Exhibit P-9) and the statement of PW-10 Dr. M.L. Kanwat, it is clear that prosecutrix Lakhanti was in between 12 to 14 years of age at the time of occurrence. In view of the age of the prosecutrix as well the statements regarding allegation of rape, the learned counsel for the appellant rightly did not challenge the impugned order passed by the trial

court. In these circumstances, no interference is called for in the order of conviction passed by the trial court.

So far as the prayer of the learned counsel for the appellant regarding conversion of his sentence of simple imprisonment to rigorous imprisonment is concerned, the learned counsel for the appellant has referred to Rule 2 of the Rajasthan Prisons Rules, 1951, (Rules under Section 59 (5) of the Prisons Act), which reads as under:-

"PART III
Remissions System
(Rules under Section 59 (5) of the
Prisons Act)

1. Definitions. - In this part -

.....
.....
.....

2. Exclusion of sentences. - No ordinary remission shall be earned in the following cases, viz:-

(i) In respect of any sentence of rigorous imprisonment amounting, exclusive of any sentence passed in default of payment of fine, to less than six months in the case of habitual prisoners and to less than 3 months or 90 days in the aggregate in the case of prisoners other than habituals.

(ii) In respect of any sentence of simple imprisonment, except for any continuous period not being less than one month, during which the prisoner labours voluntarily."

The above quoted Rule makes it clear that remission period is not earned by an accused where he

//5//

is awarded simple imprisonment. The prayer has also not been opposed seriously by the learned Public Prosecutor and after considering all the facts and circumstances of the case, I also think it fit and proper that ends of justice will meet in case the imprisonment of the appellant awarded by the trial court is converted from simple to rigorous imprisonment.

Consequently, the appeal of the appellant is disposed of. The order of conviction passed by the trial court against the appellant is upheld. The order of the trial court awarding sentence of 7 years imprisonment to the appellant is also upheld with a slight modification that the appellant shall undergo 7 years rigorous imprisonment in place of 7 years simple imprisonment. It is made clear that the benefit of remission will be given to the appellant for the whole period he already remained in jail during trial as well as after awarding him conviction and sentence.

(Narendra Kumar Jain) J.

//Jaiman//